

February 28, 2006

AO DRAFT COMMENT PROCEDURES

The Commission permits the submission of written public comments on draft advisory opinions when proposed by the Office of General Counsel and scheduled for a future Commission agenda.

Today, DRAFT ADVISORY OPINION 2006-01 is available for public comments under this procedure. It was requested by Pac for a Change.

Proposed Advisory Opinion 2006-02 is scheduled to be on the Commission's agenda for its public meeting of Thursday, March 9, 2006.

Please note the following requirements for submitting comments:

1) Comments must be submitted in writing to the Commission Secretary with a duplicate copy to the Office of General Counsel. Comments in legible and complete form may be submitted by fax machine to the Secretary at (202) 208-3333 and to OGC at (202) 219-3923.

2) The deadline for the submission of comments is 12:00 noon (Eastern Time) on March 8, 2006.

3) No comments will be accepted or considered if received after the deadline. Late comments will be rejected and returned to the commenter. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case-by-case basis in special circumstances.

4) All timely received comments will be distributed to the Commission and the Office of General Counsel. They will also be made available to the public at the Commission's Public Records Office.

CONTACTS

Press inquiries: Robert Biersack (202) 694-1220

Commission Secretary: Mary Dove (202) 694-1040

Other inquiries:

To obtain copies of documents related to AO 2006-01, contact the Public Records Office at (202) 694-1120 or (800) 424-9530.

For questions about comment submission procedures, contact Rosemary C. Smith, Associate General Counsel, at (202) 694-1650.

MAILING ADDRESSES

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

February 28, 2006

MEMORANDUM

TO: The Commission

THROUGH: Robert J. Costa
Acting Staff Director

FROM: Lawrence H. Norton
General Counsel

Rosemary C. Smith
Associate General Counsel

Mai T. Dinh
Assistant General Counsel

Anthony T. Buckley
Attorney

Subject: Draft AO 2006-01

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for March 9, 2006.

Attachment

1 ADVISORY OPINION 2006-1

2
3 Mr. Douglas Boxer, Committee Director
4 Pac for a Change
5 300 Frank Ogawa Plaza
6 Suite 500
7 Oakland, CA 94612

DRAFT

8
9 Dear Mr. Boxer:

10 We are responding to your advisory opinion request on behalf of Pac for a Change
11 (“the Committee”) concerning the application of the Federal Election Campaign Act of
12 1971, as amended (the “Act”), and Commission regulations to the Committee’s purchase
13 of books written by a Federal officeholder at a discounted rate from the publisher, and the
14 Committee’s use of those books as a gift for persons who raise at least \$100 for the
15 Committee. The Commission concludes that the Committee may purchase the books at
16 the discounted rate offered by the publisher.

17 ***Background***

18 The facts presented in this advisory opinion are based on your letter received on
19 January 11, 2006.

20 The Committee is a non-connected multicandidate committee registered with the
21 Commission. The Committee proposes to purchase a sizeable number of copies of “A
22 Time to Run,” a novel written by Senator Barbara Boxer, from the publisher, Chronicle
23 Books, a limited liability company. Chronicle Books will charge the Committee for the
24 books at a price that is less than the suggested retail price, but that is the standard price
25 Chronicle Books charges other large purchasers. Senator Boxer will sign each book, and
26 the books will then be offered to any person who raises at least \$100 for the Committee
27 in a certain time period.

1 ***Question Presented***

2 *May the Committee purchase copies of Senator Boxer's book from the publisher*
3 *at the discounted price the publisher charges other large purchasers?*

4 ***Legal Analysis and Conclusions***

5 The Commission concludes that the Committee may purchase from the publisher
6 copies of "A Time to Run" at the same discounted rate paid by other large purchasers.
7 This conclusion is based on the Committee qualifying for the discounted price as any
8 other bulk purchaser would qualify.

9 The Committee's purchase of the books at a discounted rate raises the issue of
10 whether the publisher is making an in-kind contribution to the Committee. The term
11 "contribution" includes giving "anything of value" for the purpose of influencing an
12 election. 2 U.S.C. 431(8)(A)(i) and 441b(b)(2); 11 CFR 100.52(a) and 114.1(a)(1). The
13 term "anything of value" includes the provision of goods or services at less than the usual
14 and normal charge. 11 CFR 100.52(d)(1). The "usual and normal charge" for goods
15 means the price of those goods in the market from which they ordinarily would have been
16 purchased at the time of the contribution. 11 CFR 100.52(d)(2). In the past, the
17 Commission has concluded that the purchase of goods or services at a discounted rate
18 does not constitute a contribution when the discounted items are made available in the
19 ordinary course of business and on the same terms and conditions offered to the vendor's
20 other customers that are not political committees. *See* Advisory Opinions 2004-18, 2001-
21 08, 1996-02, 1995-46, 1994-10, and 1993-20. According to your request, the Committee
22 will pay the usual and normal charge for this type of bulk purchase from the publisher.

1 Thus the publisher would not be making an in-kind contribution to the Committee in this
2 transaction.

3 Based on the foregoing analysis, the proposed activity is permissible under the
4 Act and Commission regulations. The amounts spent by the Committee for the purchase
5 of the books should be reported as operating expenditures for the 2006 election cycle.
6 2 U.S.C. 434(b)(4)(A) and (5)(A); 11 CFR 104.3(b)(3)(i).

7 This response constitutes an advisory opinion concerning the application of the
8 Act and Commission regulations to the specific transaction or activity set forth in your
9 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any
10 of the facts or assumptions presented, and such facts or assumptions are material to a
11 conclusion presented in this advisory opinion, then the requestor may not rely on that
12 conclusion as support for its proposed activity.

13
14 Sincerely,
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17
18 Michael E. Toner
19 Chairman
20

21
22 Enclosures (Advisory Opinions 2004-18, 2001-08, 1996-02, 1995-46, 1994-10, and
23 1993-20)